

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD

DISTRICT: BHARUCH

ORIG. APPLICATION NO. 497 OF 1989

1. Kanji Surtan,
2. Tersingh Bhura,
3. Hem Chand Kadia,
4. Lal Chand Gama,
5. Ramsu Sediya,
6. Magan Sadiya,
7. Bachu Bhura,
8. Bhundiya Rumal,
9. Pangle Kamla,
10. Kal Singh Rumal,
11. Smt. Jitri Kadiya,
12. Smt. Kasma Bhavan,
13. Smt. Pangle Mansingh
14. Smt. Satori Velji,
15. Smt. Jitri Kasena,
16. Smt. Handu Kanji,
17. Smt. Jitri Maniya
18. Smt. Nuri Nagji,
19. Smt. Vesti Sadiya,
20. Smt. Jeta Malji
21. Smt. Vakli Ratna.

All C/o. No.1  
Gate, Platform No.2 (Tents)  
Miyan Gam Rly. Station, W.R.  
Miyan Gam.

..... Petitioners

versus

## 1. Union of India

(to be served through the  
General Manager, Western Railway  
Church Gate, Bombay).

2. Divisional Railway Manager,  
Western Railway,  
Pratapnagar, Baroda.

3. Assistant Engineer II  
Western Railway, Bharuch.

..... Respondents.

I. PARTICULARS OF THE APPLICANTS:

- (a). Names: As stated above.  
(b). Designations: Mate  
(c). Addresses: As stated above.

II. PARTICULARS OF THE RESPONDENTS:

- (a). Name. )  
(b). Designations: } As stated above.  
(c). Address: }

III. ACTION/ORDER UNDER CHALLENGE:

Impugned action seeking to transfer the  
petitioners who are casual workers, which  
is contrary to the provisions of the Railway  
Establishment Manual and contrary to the law  
laid down by the Hon'ble Bench of this Hon'ble  
Tribunal, that transfer is not the condition of  
service of the Casual Labourers. The petitioners  
are not liable to be transferred.

IV. JURISDICTION:

This Hon'ble Tribunal has the jurisdiction to entertain this petition, in view of the settled legal position.

V. LIMITATION:

This petition is within the time limit in view of the provisions of the Central Administrative Tribunals Act.

VI. FACTS OF THE CASE:

1. The petitioners herein approached the High Court of Gujarat against the action on the part of the respondents in transferring them, as in view of the controversy with regard to the jurisdiction of this Hon'ble Tribunal for entertaining the petitions of the casual labourers ~~and/or~~ ~~only~~ ~~employees~~, this Hon'ble Tribunal was not entertaining the petitions of such employees. The High Court granted interim relief against the transfer of the petitioners in the following terms:

Ad-interim relief restraining the respondents from transferring the casual labourers whose names are listed at Annex.A from their place of work and they are further restrained from disturbing the petitioners from discharging their duties till 21-6-1989. Direct Service to respondents nos. 2 and 3 permitted."

This interim relief was thereafter extended from time to time and ultimately, Division Bench of the

High Court, by a common judgment dated 3-10-1989, in a group of matters, has held that the Central Administrative Tribunal has the exclusive jurisdiction and the rule in the concerned matter has been discharged. However, the High Court extended the stay order for six weeks. Thereafter the said interim order has been continued till 24-11-1989. *Annexed as Annexure A-1*

The petitioners are thus, protected by the High Court till 24-11-1989. *Annex. A-1* The petitioners, therefore, file this petition for appropriate orders and the interim relief protecting the services of the petitioners and restraining the respondents from transferring the petitioners.

2. The petitioners have been recruited by the Railway administration as casual labourers on 6-9-1983 and they have put in services of more than six years. They are sought to be transferred from Bharuch to Maliya Miyana. The transfer orders are ready to be served upon them. However, they continue at the same place in view of the stay order granted by the Hon'ble High Court and continued till 24-11-1989. They are sought to be transferred despite of the fact that there is sufficient work of the nature to be done by the casual labourers at that station, to last for long duration and further, the Railway Administration has employed contractors to get the work of similar nature. The Railway Administration has not so far prepared the seniority list for the entire Division of Baroda, which is the specific directions of the Hon'ble Supreme Court of India in the case of Indra Pal Yadav Vs. Union of India, 1985 (2) SCC 648. The Division Bench of this

Hon'ble Tribunal has also held that transfer is not the service condition of the casual labourers. Therefore, the impugned action of transferring the petitioners who are lowly paid casual labourers is arbitrary, discriminatory, based on irrelevant and extraneous consideration, null, void, violative of Articles 14 and 16 of the Constitution of India.

3. The petitioners submit that the service condition with regard to the casual labourers provided under Chapter XXV (Para 2501), providing non-transfer of the employees is reproduced here in below:

"2501. (a). Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer and the conditions applicable to permanent and temporary staff do not apply to such labour."

Transfer not being the service condition, the action is wholly in contravention of the provisions of law and, therefore, the impugned action of transferring the petitioners from Bharuch to Malia Miyana is against the policy of the Government, because as per the policy of the Government such casual labourers who have put up long years of services are to be screened and made permanent and it is to be done Division wise. Therefore, in order to defeat their legitimate claim of getting

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permanent in the Railway Administration under Baroda Division, on the basis of their long service, would be frustrated, as the seniority will be fixed on the basis of services rendered in the particular Division. By transferring the petitioners frequently from one place to another, which does not serve the purpose of the Administration and is also not permissible under the Railway Establishment Manual, the claim of the petitioners would be adversely affected and the benefit of getting the seniority in a particular place and thereby getting the absorption would be frustrated. The railway administration would not assign the seniority to such persons and such practice of the Railway Administration of not preparing the list Division-wise has been criticised by the Hon'ble Supreme Court on various occasions. The impugned action of transferring the casual labourers is therefore, absolutely illegal, unjust, arbitrary, discriminatory, contrary to the rules and the relevant instructions, unconstitutional and violative of Articles 14 and 16 of the Constitution of India.

4. The illegality of the impugned action of transferring the petitioners, inspite of the fact that there is sufficient work to get them absorbed, is clear from the fact that persons junior to them are kept in the employment with the PWI (BG) WR Bharuch, who are the recruits of 1984 and 1985. Similarly persons junior to them are working with PWI (PQRS) Bharuch.

5. It may be submitted here that the petitioners herein were sought to be transferred in the year 1987 and they had approached the Hon'ble Tribunal in a batch of 87 persons from Bharuch to Viramgam. The Hon'ble Tribunal has been pleased to quash and set aside the order and has directed that the petitioners shall not be transferred until their seniority is ascertained in the seniority list prepared in their originating Divisions and thereafter the liability of transfer will be on the basis of their accepting it voluntarily. Further the Hon'ble Tribunal has been pleased to hold that if they are sought to be transferred the procedure of last come first go has to be followed. The Hon'ble Tribunal has been pleased to pass the said orders in O.A.No. 505 pf 1987. The petitioners crave leave to refer to and rely upon the said judgment at the time of hearing as and when necessary. In spite of this clear position, the respondent authorities are bent upon to transfer the petitioners from Bharuch to Malia Miyana in other Division. Thus the impugned action is absolutely illegal and contrary to the directions of this Hon'ble Tribunal and it amounts to contempt of Court too. The directions of this Hon'ble Tribunal in O.A.No.505/87 were in respect of the present petitioners also, of preparing the seniority list of the Division and only thereafter the possibility of transfer and that too on the basis of last come first go is to be considered. No seniority list is prepared and ignoring the directions of the Hon'ble Tribunal, the petitioners are again sought to be victimised and they have been picked up for such discriminatory treatment.

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6. The petitioners further submit that the impugned transfer of the petitioners, who are casual labourers, is contrary to the relevant rules and regulations of the respondents themselves. Para 2501 of the Railway Establishment Manual is relevant and it provides that the casual labour is not liable to transfer and this Hon'ble Tribunal as stated above, has also observed that the transfer is not the condition of service of the casual labour. Therefore, the service conditions of the employees are violated and the action is therefore, in violation of provisions of section 9A of the Industrial Disputes Act, 1947. Under section 9-A of the Industrial Disputes Act the employer, who proposes to effect any change in the service conditions applicable to any workman, is not permitted to do so without following the due procedure for the same prescribed under the Act. In the present case, no such procedure has been complied with, no notice as to why the service conditions which are immediately applicable should not be altered or changed, has been given. Therefore, no change can be made in the service conditions of the petitioners till para 2501 is taken out of statute and is repealed. Hence the impugned action on the part of the respondents in transferring the petitioners from Bharuch, in spite of there being the directions of this Hon'ble Tribunal not to effect any such transfer till the seniority list is prepared, is absolutely illegal, unjust, arbitrary, discriminatory, inhumane, in utter breach and defiance of directions of the Hon'ble Tribunal, in violation of provisions of Section 9-A of the Industrial Disputes Act and therefore, the impugned act is liable to be quashed and set aside.

7. It is further submitted that so far as work is concerned, there is sufficient work available in the vicinity of Bharuch itself. About 16 kms. ~~away~~ Railway sleepers are sought to be changed and immediately minimum 10,000 sleepers have been unloaded from Varadia to Bharuch. It is also submitted that many employees are employed through the contractors from whom the railway administration extracts the work within the allocated jurisdiction of respondent no.3 herein. Thus, there is sufficient work with the respondent authorities at Bharuch itself, where the petitioners can be accommodated without any difficulties.

8. It is submitted that the petitioners are not ~~an~~ offered the work from 25-5-1989 when the petitioners, through their Union representatives have approached the authorities and it was told that their orders of transfers are in process and they would be transferred to elsewhere. These poor labourers were hand to mouth ~~and without~~. It is submitted that the nature of work done by the petitioners is such that without that work the trains cannot move an inch, they perform day to day work on the tracks in the scorching heat and shevering cold; changing of the sleepers, arranging the fish plates, laying down the tracks, spreading the stone pieces on the tract, etc. is the work which never last until some new techniques are adopted and developed to run the trains. Therefore there cannot be a ground of transferring them on the ground of non-availability of work, which otherwise else is not a ground.

9. It is pertinent to submit that the employees who have approached the Hon'ble Tribunal by way of O.A.No. 505 of 1987 have been sent to Khrisco and they are working there peacefully where there is work to last for years. Petitioners are seeking to invoke the jurisdiction of this Hon'ble Tribunal on the ground that the Hon'ble High Court has held that the Central Administrative Tribunal only has the jurisdiction to entertain the petition of the petitioners as at the relevant time in view of the controversy, the Hon'ble Tribunal was not entertaining such petitions. The Hon'ble High Court has protected the petitioners till so far by granting stay and the said stay has been extended upto 24-11-1989 as stated earlier.

10. The petitioners have no other adequate, and alternative remedy against the substantial injustice done to them, which also amounts to contempt of this Hon'ble Tribunal, as stated earlier.

11. The petitioners crave leave to amend this petition by adding, deleting or amending any of the paragraphs of this petition as and when necessary.

#### VII. P R A Y E R S

On the grounds stated above and those that may be urged at the time of hearing of this Application, the petitioners pray -

- (A) The Hon'ble Tribunal may be pleased to declare the action of transferring the petitioners from Bharuch to Maliya Miyan or elsewhere being violative of service conditions as provided under para 2501 of the Railway Establishment Manual, violative of Art. 14 and 16 of the Constitution of India and violative of sec. 9-A of the Industrial Disputes Act, 1947.
- (B) Be pleased to quash and set aside the transfer orders in respect of the petitioners and direct the respondents to treat the same as non est and illegal and to continue the petitioners at Bharuch.
- (C) Be pleased to declare that the Casual Labourers are not to be transferred not being the service condition.
- (D) Be pleased to pass such other and further orders as may be deemed just and proper by the Hon'ble Tribunal.

VIII. INTERIM RELIEFS:

During the pendency ~~of~~, hearing and final disposal of this Application, the Hon'ble Tribunal may be pleased to grant interim stay restraining the respondents from transferring the petitioners from the place of their working to anywhere else and be further

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pleased to direct the respondent authorities to allow them to perform their duties with a direction that they be paid their salaries regularly ~~and not~~ and not to cause any intervention of any nature in the execution and performance of their duties.

IX. PARTICULARS OF THE POSTAL ORDER:

Postal order No. 194259

Amount. 50/-

Date 20-11-89

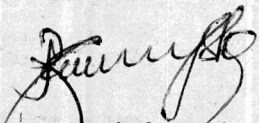
Name of the Post Office:

*I* Matter not pending before any Hon'ble Court. I have exhausted all the remedies available.

And for this act of kindness the petitioners as in duty bound shall for ever pray.

Ahmedabad:

November 16, 1989

  
( R.K. Mishra )  
Applicants' Advocate.

V E R I F I C A T I O N

I, Kanjibhai son of Shri Surtanbhai, aged working as a Mate, ~~in the~~ under the Assistant Engineer II, Western Railway, Bharuch, resident of Bharuch, do hereby verify that the contents of para I to V, VI.1 to VI.2 are true to my personal knowledge and paras VI.3 to VI.9, VII and VIII are believed to be true on legal advice and that I have not suppressed any material fact.

Dated: November 20/11/1989

(Kanjibhai Surtan )

I identify the thumb impression  
Kanjibhai Surtan

Filed by Mr. P. C. Mishra  
Learned Advocate for Petitioners  
with second set & ..... 3 ..... copies  
copies copy served/not served to  
other side

Dt. 20/11/89 Dy. Registrar C.A.T (U)  
A'bad Bench